

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ANTOINE SIMPSON,

Petitioner,

v.

Case Number 10-12343
Honorable David M. Lawson

CINDI CURTIN,

Respondent.

**ORDER DENYING MOTION FOR AN EVIDENTIARY HEARING
WITHOUT PREJUDICE**

On October 5, 2012, the petitioner filed an amended petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, alleging that he is incarcerated in violation of his constitutional rights. Although the respondent has filed an answer to the petition, to date, the respondent has not filed an answer to the amended petition. The respondent's answer is due on December 1, 2012. Pending before the Court is the petitioner's motion for an evidentiary hearing.

The petitioner's request for an evidentiary hearing at this point in the proceedings is premature. Rule 8, Rules Governing Section 2254 Cases in the United States District Courts states, in pertinent part:

If the petition is not dismissed at a previous stage in the proceeding, the judge, after the answer and the transcript and record of state court proceedings are filed, shall, upon a review of those proceedings and of the expanded record, if any, determine whether an evidentiary hearing is required.

Rule 8(a), Rules Governing Section 2254 Cases. The Court will reconsider petitioner's motion if, following receipt of the responsive pleading and Rule 5 materials, the Court determines that an evidentiary hearing is necessary.

Accordingly, it is **ORDERED** that the petitioner's motion for an evidentiary hearing [dkt. #11] is **DENIED WITHOUT PREJUDICE**.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Dated: November 1, 2012

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on November 1, 2012.

s/Deborah R. Tofil
DEBORAH R. TOFIL